

NOTICE: THIS AGREEMENT IS NON-NEGOTIABLE

2009 INCITE PROGRAM FEDERALLY FUNDED USER AGREEMENT

NO. _____

THIS AGREEMENT, entered into this the ____ day of _____, by and between _____, (hereinafter called "**Contractor**" or "**Facility Operator**"), managing the _____ National Laboratory under Contract No. _____ **with the UNITED STATES OF AMERICA** (hereinafter called the "Government"), as represented by the **UNITED STATES DEPARTMENT OF ENERGY** (hereinafter called "DOE"), and _____ (hereinafter called the "User"):

ARTICLE I — SCOPE OF SERVICES

Subject to the terms and conditions set forth below, the Contractor shall make available to designated employees or representatives (hereinafter referred to as "Participants," individually or collectively, as the context suggests) of User certain facilities, equipment, services, information and/or material (hereinafter referred to as the "Activity") as described in Appendix A, which is attached hereto and hereby made a part of this Agreement.

ARTICLE II — COSTS

Upon request by User and at the Contractor's discretion, limited support services may be provided to the User. Should such support be provided, the Contractor will retain its employees assigned to User support functions on its payroll, and costs associated with the User support services will be paid by the User to the account of DOE in accordance with DOE's pricing policy as set forth in Appendix A.

ARTICLE III — BILLING

The Contractor will invoice the User for User support services, as defined in Appendix A, at the intervals and to the billing address specified therein. Each such invoice shall be paid by User in accordance with instructions furnished therewith.

ARTICLE IV — ADMISSION; PERSONNEL RELATIONSHIPS

- A. Each admission or readmission of a Participant to the Activity under this Agreement shall be subject to and implemented under the applicable admission regulations and procedures of the Contractor and DOE. Each Participant shall execute Appendix B, which is attached hereto and made a part of this Agreement, and deliver it to the Contractor on or before admission to the Activity.
- B. Participants shall be considered employees or representatives of User during all activities under this Agreement and shall not be considered employees of the Contractor or DOE for

any purpose. However, the occupational activities of Participants shall be subject to the administrative and technical oversight of the Contractor during and in connection with such participation in the Activity, and the Participant shall therefore abide by and comply with all applicable rules, regulations and requirements of the Contractor and DOE with regard to such Activity including, but not limited to, those pertaining to security, safety, operating and health-physics procedures, environmental protection, access to information, hours of work, computer security and conduct. User shall obtain such agreements from each Participant as necessary to implement the provisions of this Agreement.

- C. "Admission" shall be construed to include both physical access to the ORNL site and remote access by electronic means.
- D. For Activities that involve Contractor computers, data storage systems, or communication networks, all Participants must comply with the Contractor Computer Use Policy. **THE USE OF CONTRACTOR RESOURCES TO STORE, MANIPULATE, OR REMOTELY ACCESS ANY NATIONAL SECURITY INFORMATION IS EXPRESSLY PROHIBITED.** This includes, but is not limited to, classified information, unclassified controlled nuclear information (UCNI), naval nuclear propulsion information (NNPI), the design or development of nuclear, radiological, biological, or chemical weapons or of any weapons of mass destruction. DOE and Contractor shall have the unrestricted right to inspect all codes and data to ensure compliance with this clause.

ARTICLE V — SCHEDULING

The User understands and agrees (a) that the Activity is subject to the priority of the Contractor's work for the Government and on a non-priority basis in regard to other users, and (b) that the Contractor, through its cognizant user facility administrator, shall have sole responsibility and discretion for allocating and scheduling usage of the facilities, equipment, services, materials and/or information needed for or involved in the Activity.

ARTICLE VI — MATERIALS AND COMPUTER CODE

It is recognized that any material to be supplied by the User may be damaged, consumed, or lost. Materials (including residues and/or other contaminated material) remaining after performance of the work or analysis will be removed in their then condition by the User at the User's expense.

It is recognized that any computer code (object and source) must be removed by the User within 30 days from completion or termination of this Agreement. The Government has unlimited rights in any computer code remaining at the User Facility.

ARTICLE VII--SPECIAL NOTICE CONCERNING PROTECTION OF INFORMATION AND INFORMATION SYSTEMS AT COMPUTER USER FACILITIES

The _____ (name of user facility—hereinafter called "User Facility") has implemented controls for protecting non-sensitive unclassified (fundamental research) information based on the NIST 800-53 "Low Baselines and Compensatory Controls". Risk is currently mitigated using

available enterprise infrastructure and network-based tools to provide perimeter protection and vulnerability resolution. System and application-level security controls are implemented according to industry and federal best practices. All non-temporary user data resides on centralized file and archival storage systems that are regularly backed up. This data is protected and segmented from other users using standard access controls.

It is the sole responsibility of the User to identify the type of information that is to be processed (e.g., sensitive or non-sensitive) and to notify the User Facility of any specific data protection requirements beyond the currently implemented protections. The User Facility cannot guarantee that risks to preserving the Confidentiality, Integrity, and Availability (CIA) of information stored on its systems are zero, hence requests for processing data that is of a sufficiently sensitive (e.g., proprietary or export controlled) nature are not encouraged. Information sensitivity concerns apply to the purpose and intent of the research, the loading and execution of application software, input data for the application software, output data generated by the application software, and any data resulting from analysis of output data. If, for example, the application software has an export control classification number (ECCN), prospective users should acknowledge this fact along with giving the ECCN.

ARTICLE VIII — PATENT AND TECHNICAL DATA PROVISIONS

- A. The User will follow the terms and conditions of its Federal Funding Agreement (e.g., grant or contract).
- B. Any invention or discovery which Contractor employees or subcontractors may make or other Intellectual Property which they may generate during the course of providing such support services (which are intended to be non-collaborative) will be governed by the provisions of Contractor's Prime Contract or applicable subcontracts.
- C. Legal Notice

The following legal notice shall be affixed to each report or publication resulting from this Agreement which may be distributed by the User:

DISCLAIMER NOTICE

This document was prepared by _____, as a result of the use of facilities of the U.S. Department of Energy (DOE) which are managed by _____ (Contractor). Neither Contractor DOE, or the U.S. Government, nor any person acting on their behalf: (a) makes any warranty or representation, express or implied, with respect to the information contained in this document; or (b) assumes any liabilities with respect to the use of, or damages resulting from the use of any information contained in the document.

ARTICLE IV — LIABILITY

- A. Neither the Government, DOE, the Contractor, nor persons acting on their behalf will be responsible for any injury to or death of persons or other living things or damage to or destruction of property or for any other loss, damage or injury of any kind whatsoever resulting from the furnishing of facilities, equipment, material, information or personnel under this Agreement, and not directly resulting from the sole fault or negligence of the Government, DOE, the Contractor, or persons acting on their behalf.
- B. Neither the Government, DOE, the Contractor, nor persons acting on their behalf will be responsible, irrespective of cause, for failure to furnish the facilities, equipment, material, information or personnel under this Agreement at any particular time or in any particular manner.
- C.
 - 1. If, and to the extent permitted by law applicable to the User, and except for any liability resulting from any negligent or intentional acts or omissions of the Contractor, the User indemnifies the Government and the Contractor for all damages, costs and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the User, its assignees or licensees, which was derived from the work performed under this Agreement. In respect to this Article, neither the Government nor the Contractor shall be considered assignees or licensees of the User, as a result of reserved Government and Contractor rights. The indemnity set forth in this paragraph shall apply only if the User shall have been informed as soon and as completely as practical by the Contractor and/or the Government of the action alleging such claim and shall have been given an opportunity, to the extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Contractor and/or the Government shall have provided reasonably available information and reasonable assistance requested by the User. No settlement for which the User would be responsible shall be made without the User's consent unless required by final decree of a court of competent jurisdiction.
 - 2. If, and to the extent permitted by law applicable to the User, the User agrees to indemnify and save harmless the Government, DOE, the Contractor, and persons acting on their behalf from any costs and expenses resulting from loss, damage, destruction, misuse or alteration to or of property of the U.S. Government to the extent that such loss, damage, destruction or alteration is caused or contributed to by the intentional or negligent act of User or its employees or representatives.
- D. The foregoing provisions of this Article VIII shall have no application to public liability for nuclear incident as defined and provided for in the Atomic Energy Act of 1954, as amended, compensation for which shall be in accordance with such law.
- E. **Patent and Copyright Indemnity – Limited** If and to the extent permitted by law applicable to the User, the User shall indemnify the Government, DOE, and Contractor, and their officers, agents, and employees against liability, including costs, for infringement of any United States patent or copyright arising out of any acts performed or directed by the User to be performed under the Agreement. To the extent that such acts

are not normally performed at the Facility. Further, the foregoing indemnity shall not apply unless the User shall have been informed in a reasonable time by Contractor, DOE, or the Government of the suit or action alleging such infringement and such indemnity shall not apply to a claimed infringement which is settled without the consent of the User unless required by a court of competent jurisdiction.

ARTICLE X — EXPORT CONTROLS

- A. User hereby acknowledges notice that the export of goods and/or Technical Data from the United States may require some form of export control license from the U. S. Government and that failure to obtain such export control license may result in criminal liability under the laws of the United States.
- B. The User also acknowledges that it is responsible for its own export control administration.

ARTICLE XI — ENTIRE AGREEMENT

It is expressly agreed by the parties hereto that this Agreement constitutes the entire and only Agreement between the parties with respect to the subject matter herein; and that this Agreement cannot be amended nor any provision thereof waived except by an instrument in writing and duly executed on behalf of each of the parties hereto by the duly authorized representative of each party.

ARTICLE XII — TITLE AND ADMINISTRATION

It is understood and agreed that this Agreement is entered into by the Contractor for and on behalf of the Government; that the Contractor is authorized to and will administer this Agreement in other respects for DOE, unless otherwise specifically provided for herein; that administration of this Agreement may be transferred from the Contractor to DOE or its designee, and in case of such transfer and notice thereof to the User, the Contractor shall have no further responsibilities hereunder.

ARTICLE XIII — TERMINATION

Either party hereto may terminate this Agreement for any reason at any time by giving not less than thirty (30) days' prior written notice to the other party, the Contractor reserves the right to immediately cancel this Agreement without regard to the aforesaid written notice when cancellation of this Agreement is determined to be necessary to the national defense and security of the United States. Such termination shall only affect the term of this Agreement, and shall otherwise be without prejudice to the rights of the parties hereunder which may have previously accrued.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month, and year first above written.

FOR USER

FOR CONTRACTOR

BY: _____

BY: _____

NAME (typed): _____

NAME (typed): _____

TITLE: _____

TITLE:

DATE: _____

DATE: _____